

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IMG Worldwide, Inc., <i>et al.</i> ,)	CASE NO. 1:11 CV 1594
)	
)	JUDGE DONALD C. NUGENT
Plaintiffs,)	
v.)	
)	MEMORANDUM OPINION
Westchester Fire Insurance Company,)	AND ORDER
)	
Defendant.)	

This matter is before the Court on Plaintiffs' Motion for Award of Pre-Judgment Interest. (ECF #117) Plaintiffs move for an award of pre-judgment interest pursuant to Ohio Rev. Code §§ 1343.03 and 5703.47 against Defendant Westchester on the \$3.9 million in damages awarded by the jury for Westchester's breach of contract for its refusal to pay any amount of the Gastaldi settlement. (See Partial Judgment, ECF #105) Section 1343.03 awards pre-judgment interest to an insured that prevails in coverage litigation and begins to accrue from the moment an event triggers the insurer's payment obligation. *Landis v. Grange Mut. Ins. Co.*, 82 Ohio St. 339, 341-42, (Ohio 1998). Plaintiffs assert that the Jury Verdict, consistent with the insurance policy at issue, concludes that the Gastaldi settlement triggered Westchester's duty to indemnify Plaintiffs for \$3.9 million. Accordingly, pre-judgment interest began accruing when the indemnity payment became "due and payable" upon IMG's payment of the Gastaldi settlement on June 15, 2010. Plaintiffs calculate that under the provisions of R.C. § 5703.47, Plaintiffs should be awarded pre-judgment interest of \$406,775.34, for the period June 15, 2010 through May 31, 2013, plus pre-judgment interest accruing thereafter at the per diem rate of \$320.55, until entry of Final Judgment.

Westchester has filed an objection to Plaintiffs' Motion for Award of Pre-Judgment Interest, arguing only that the date of commencement of pre-judgment interest should be when IMG obtained \$1 million from its primary insurer Great Divide on September 23, 2010, and not on June 15, 2010, the date of IMG's payment of the Gastaldi settlement. Westchester agrees that other than the commencement date of the award, Plaintiffs' calculation of the interest due (using the correct rates of interest under Ohio law and correct methodology using simple not compound interest) is correct.

Under the terms of the Jury's Verdict and the policy at issue in this action, the trigger date for pre-judgment interest is clearly June 15, 2010, the date of the Gastaldi settlement. Accordingly, Plaintiffs' calculation of pre-judgment interest is correct in all respects. As such, Plaintiffs' Motion for an Award of Pre-Judgment Interest (ECF #117) is GRANTED and pre-judgment interest shall be awarded in the amount of \$412,224.69, as will be set forth in the Final Judgment issued contemporaneously with this Order.

IT IS SO ORDERED.

DATED: June 17, 2013



DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE